

14549 MORGAN, LEWIS & BOCKIUS

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REGISTRATION NO. 1100 1425

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REGISTRATION NO. Filed 1425

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JAN 16 1985 - 2 05 PM

HARRISBURG
LONDON

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

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REGISTRATION NO. Filed 1425

STEWART P. GREENE
DIAL DIRECT (212) 309-6042

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REGISTRATION NO. Filed 1425

January JAN 16 1985 - 2 05 PM

JAN 16 1985 - 2 05 PM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

No.

Date JAN 16 1985

Fee \$ 10.00

Washington, D.C.

Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Secretary:

We have enclosed one original and three photocopies of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

These documents are, within the classification scheme promulgated as 49 C.F.R. §1177.1, as follows:

1. A Conditional Sale Agreement, dated as of December 1, 1984 - a primary document.
2. An Agreement and Assignment, dated as of December 1, 1984 of certain rights under the aforementioned Conditional Sale Agreement - a secondary document.
3. A Lease of Railroad Equipment, dated as of December 1, 1984 - a primary document.
4. An Assignment of Lease and Agreement, dated as of December 1, 1984, of certain rights under the aforementioned Lease of Railroad Equipment - a secondary document.

We request that the Agreement and Assignment and the Assignment of Lease and Agreement each be cross-indexed.

The names and addresses of the parties to the above-mentioned documents are as follows:

Conveyed by Helen R. Schwartz

JAN 16 1 57 PM '85
MOTOR VEHICLE UNIT
TOC OFFICE OF THE SECRETARY

MORGAN, LEWIS & BOCKIUS

-2-

1. Conditional Sale Agreement:

Vendor: Ortner Freight Car Company
2652 Erie Avenue
Cincinnati, Ohio 45208

Vendee: Cargill Leasing Corporation
P.O. Box 5627
Minneapolis, Minnesota 55440

2. Agreement and Assignment:

Builder: Ortner Freight Car Company
2652 Erie Avenue
Cincinnati, Ohio 45208

Assignee: Mercantile-Safe Deposit & Trust Company
P.O. Box 2258
2 Hopkins Plaza
Baltimore, Maryland 21203

3. Lease of Railroad Equipment:

Lessor: Cargill Leasing Corporation
P.O. Box 5627
Minneapolis, Minnesota 55440

Lessee: Detroit Edison Company
2000 Second Avenue
Detroit, Michigan 48226

4. Assignment of Lease and Agreement:

Lessor: Cargill Leasing Corporation
P.O. Box 5627
Minneapolis, Minnesota 55440

Vendor: Mercantile-Safe Deposit & Trust Company
P.O. Box 2258
2 Hopkins Plaza
Baltimore, Maryland 21203

A description of the equipment covered by the above-mentioned documents follows:

Three hundred sixty-six (366) 108 Ton, 4,320 cu.ft. aluminum bodied, steel underframed, rotary dump, gondola rail cars, of AAR mechanical designation "GT J401"; identifying marks include the numbers DEEX 7601-7966 (inclusive) identifying Detroit Edison Company as the lessee thereof and the words "Owned by Cargill Leasing Corporation. Ownership subject to a Conditional Sale Agreement filed under 49 U.S.C. §11303."

MORGAN, LEWIS & BOCKIUS

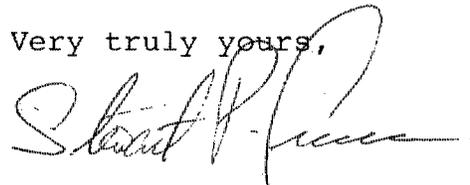
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A fee of \$ 10.00 is enclosed. Please return the original and any extra copies of all documents not needed by the Commission for recordation to the person presenting this letter and its enclosures for filing.

A short summary of the documents to appear in the index follows:

1. Conditional Sale Agreement between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio 45208 and Cargill Leasing Corporation, P.O. Box 5627, Minneapolis, Minnesota 55440, dated as of December 1, 1984, covering up to three hundred sixty-six (366) 108 Ton, 4,320 cu.ft. aluminum bodied, steel underframed, rotary dump, gondola rail cars.
2. Agreement and Assignment between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio 45208 and Mercantile-Safe Deposit & Trust Company, as Agent, P.O. Box 2258, 2 Hopkins Plaza, Baltimore, Maryland 21203, dated as of December 1, 1984, of certain rights of Ortner Freight Car Company under a Conditional Sale Agreement between Ortner Freight Car Company and Cargill Leasing Corporation, dated as of December 1, 1984.
3. Lease of Railroad Equipment between Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226 and Cargill Leasing Corporation, P.O. Box 5627, Minneapolis, Minnesota 55440, dated as of December 1, 1984, covering up to three hundred sixty-six (366) 108 Ton, 4,320 cu.ft. aluminum bodied, steel underframed, rotary dump, gondola rail cars.
4. Assignment of Lease and Agreement between Cargill Leasing Corporation, P.O. Box 5627, Minneapolis, Minnesota 55440 and Mercantile-Safe Deposit & Trust Company, as Agent, P.O. Box 2258, 2 Hopkins Plaza, Baltimore, Maryland 21203, dated as of December 1, 1984, of certain rights of Cargill Leasing Corporation under a certain Lease of Railroad Equipment between Detroit Edison Company and Cargill Leasing Corporation, dated as of December 1, 1984.

Very truly yours,



Stewart P. Greene

SPG/ss
Enc.

Interstate Commerce Commission
Washington, D.C. 20423

1/16/84

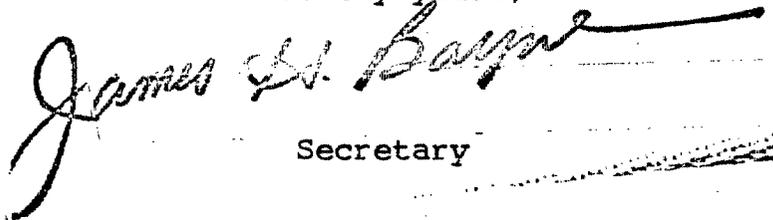
OFFICE OF THE SECRETARY

Stewart P. Greene
Morgan, Lewis & Bockius
101 Park Avenue
New York, N.Y. 10178

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/16/85 at 2:05pm and assigned re-
recording number (s) . 14549, 14549-A, 14549-B & 14549-C

Sincerely yours,


Secretary

Enclosure(s)

SE-30
(7/79)

14549

RECORDATION NO. DATE FILED

JAN 16 1985 2 32 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1984

between

ORTNER FREIGHT CAR COMPANY

and

CARGILL LEASING CORPORATION, Vendee

14.49% Conditional Sale Indebtedness due December 31, 2002

Recordation No. _____ Filed & Recorded _____
Interstate Commerce Commission

Conditional Sale Agreement

TABLE OF CONTENTS*

	<u>Page</u>
ARTICLE 1. Assignment; Definitions.....	1
ARTICLE 2. Construction and Sale.....	2
ARTICLE 3. Inspection and Delivery.....	2
ARTICLE 4. Purchase Price and Payment.....	5
ARTICLE 5. Security Title to the Equipment.....	9
ARTICLE 6. Taxes.....	10
ARTICLE 7. Maintenance, Termination Casualty Occurrences.....	11
ARTICLE 8. Reports and Inspections.....	13
ARTICLE 9. Marking of Equipment.....	13
ARTICLE 10. Compliance with Laws and Rules.....	14
ARTICLE 11. Possession and Use.....	14
ARTICLE 12. Prohibition Against Liens.....	14
ARTICLE 13. Indemnities and Warranties.....	15
ARTICLE 14. Assignments.....	17
ARTICLE 15. Defaults.....	19
ARTICLE 16. Remedies.....	22
ARTICLE 17. Applicable State Laws.....	26
ARTICLE 18. Recording.....	26
ARTICLE 19. Article Headings; Effect and Modification of Agreement.....	27
ARTICLE 20. Notice.....	27

ARTICLE 21.	Immunities; Satisfaction of Undertakings.....	28
ARTICLE 22.	Law Governing.....	28
ARTICLE 23.	Execution.....	28
SCHEDULE I.	Allocation Schedule.....	
ANNEX A	Builder's Warranties.....	
ANNEX B	Specifications.....	

*This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of December 1, 1984, between ORTNER FREIGHT CAR COMPANY, a Delaware corporation (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and CARGILL LEASING CORPORATION, a Delaware corporation (the "Vendee").

WHEREAS the Builder has agreed to construct, conditionally sell and deliver to the Vendee, and the Vendee has agreed to conditionally purchase, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment");

WHEREAS the Vendee is entering into a Lease of Railroad Equipment with The Detroit Edison Company (the "Lessee") in substantially the form annexed hereto as Annex C (the "Lease") pursuant to which the Lessee will lease from the Vendee all the units of Equipment so purchased, or such lesser number of units as are delivered and accepted hereunder; and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof) is acting as Agent for the institutional investor (the "Investor") named in that certain Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee and the Investor, and all obligations of the Vendee to the Builder under the Purchase Order (as defined in the Participation Agreement) will be superseded by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) of the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment (the "CSA Assignment") dated as of the date hereof between the Builder and the Assignee.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or

excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the Builder and any successor or successors for the time being to its manufacturing properties and business.

The parties hereto contemplate that the Vendee will assign to the Assignee, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights, title, and interests of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment") and the Lessee will consent thereto pursuant to a Consent and Agreement (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of Equipment and will conditionally sell and deliver to the Vendee, and the Vendee will conditionally purchase from the Builder, and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), the Equipment, each unit of which shall be constructed in accordance with the Purchase Order and the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). Notwithstanding anything to the contrary contained in this Agreement, if there is any inconsistency between any provision hereof and any provision of the Purchaser Order wherein the provision hereof is less favorable or more onerous to the Builder than the provision of the Purchase Order, the provision of the Purchase Order shall prevail. The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their aggregate cost will not be more than 20% of the cost of material and parts used in constructing such unit) and will not have been used by any person so as to preclude the "original use" of such unit, within the meaning of Sections 48(b)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Vendee.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto, freight, storage and

insurance charges, if any, to the place of delivery specified in said Annex B prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made (i) until this Agreement, the Lease, the CSA Assignment and the Lease Assignment have been filed pursuant to 49 U.S.C. §11303 and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall have been made for publication of notice of such deposit in The Canada Gazette; (ii) subsequent to the commencement of any proceedings or the occurrence of any event specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto (or such higher amount as the Vendee and the Assignee may have agreed to pursuant to Article 4) and (iv) subsequent to receipt of a written notice from the Lessee pursuant to the last sentence of Paragraph 14 of the Participation Agreement. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee (i) of a Default, or (ii) that there has been a material adverse change in the business prospects or financial condition of the Lessee since the date of the most recent financial statements referred to in Paragraph 4(b) of the Participation Agreement, and (b) following receipt of a written notice from the Lessee pursuant to the last sentence of Paragraph 14 of the Participation Agreement and (c) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 8 and 9 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) or in clause (b) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to May 31, 1985, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and

the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee and the Assignee agree, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee and the Assignee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control practices. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery, and if each such unit conforms to the specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") substantially in the form of Schedule C to the Lease; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Upon delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to the Vendee shall be held by the Vendee solely as trustee for the benefit of the Builder.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee, including prepaid insurance, storage and freight charges, if any, to the place of delivery specified in said Annex B, but excluding sales taxes. The term "Purchase Price" as used herein shall mean the base price or prices per unit of the Equipment as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee and the Assignee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than such Maximum Purchase Price (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto (each such group being hereinafter called the "Group"). The term "Closing Date" with respect to any Group shall mean such date, which shall be the last business day of any month or such other day as may be established pursuant to the provisions of the first paragraph of Paragraph 2 of the Participation Agreement, but in no event earlier than January 31, 1985, nor later than May 31, 1985, occurring following

presentation by the Builder to the Vendee of the Invoices and Certificates of Acceptance for such Group and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to the Group an amount equal to 42.53209736% of the aggregate Purchase Price of the Group; and

(b) in 37 installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on May 31, and November 30, each year, commencing May 31, 1985, to and including November 30, 2002, with a final payment due on December 31, 2002 (or, if any such date is not a business day, on the next preceding business day), each such date being hereinafter called a "Payment Date". The unpaid principal of the CSA Indebtedness from time to time outstanding shall bear interest at the rate of 14.49% per annum. Interest accrued on the CSA Indebtedness shall be due and payable on each Payment Date, commencing on May 31, 1985. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid on the certificates after the same shall have become due and payable pursuant to the terms hereof at the rate of 15.49% per annum (the "Overdue Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as Provided in Articles 7 and 15 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by the Vendee only to the extent that the Vendee (or any such assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments.

Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, it is agreed that the Vendee (and such assignee) (i) make no representation or warranty with respect to, and are not responsible for, the execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) insofar as it relates to the Lessee or to any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee (or any such assignee) at

any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences and any Termination (as such terms are defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease, and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including repayments thereof required in respect of Casualty Occurrences and any Termination) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such pre-payments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, the Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Also notwithstanding anything to the contrary contained in this Agreement, if (a) the Vendee becomes a debtor subject to the reorganization provisions of Title 11 of the United States Code, or any successor provision, (b) pursuant to such reorganization provisions the Vendee is held to have recourse liability, directly or indirectly, to make payment on account of any amount payable as CSA Indebtedness or interest thereon and (c) any holder of any CSA Indebtedness or the Agent, as the case may be, actually receives any Excess Amount which reflects any payment by the Agent on account of the recourse liability referred to in clause (b) above then, to the extent it may lawfully do so, such holder or the Agent, as the case may be, shall refund such Excess Amount, as promptly as possible, without interest, to the Vendee after receipt by such holder or the Agent, as the case may be, of a written request for such refund by the Vendee (which request

shall specify the amount of such Excess Amount and shall set forth in detail the calculation thereof). For purposes of this Article 4, "Excess Amount" means the amount by which any payment received by the Agent or any holder of the CSA Indebtedness exceeds the amount which would have been received by such holder or the Agent if the Vendee had not become subject to the recourse liability referred to in clause (b) above. Nothing contained in this Article 4 shall prevent the Agent or the holders from enforcing and retaining the proceeds of any personal recourse obligation of the Vendee under the Participation Agreement. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or against the Lessee under and as provided in the Lease and the Lease Assignment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Title to the Equipment. The Vendor shall and hereby does retain a security title and interest in the Equipment until the Vendee shall have made all its payments under this Agreement, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of the Equipment (except as otherwise specifically provided in §9 of the Lease) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security title to and interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee and (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment. The Vendee hereby waives any and all rights, existing or that may be acquired, in or to the payment of

any penalty or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law requiring the filing of the same, except for failure so to do within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license and registration fees, levies, imposts, duties, assessments, charges, fines, penalties or additions to tax hereafter levied or imposed upon or in connection with or measured by this Agreement or the Equipment or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license and registration fees, levies, imposts, duties, assessments, charges, fines, penalties or additions to tax being hereinafter called "impositions"), all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

Based upon information supplied by the Lessee it is the

understanding of the Vendee and the Vendor that no sales or use tax is payable to Kentucky or Ohio, or any taxing authority therein, with respect to the sale or delivery of the Equipment and neither the Vendee nor the Vendor shall pay such a tax to any such jurisdiction (or file a report with any such jurisdiction indicating that such a tax is payable) in the absence of an assertion by such jurisdiction that such tax is payable. The provisions of this Section 6 shall apply, however, to any such tax that is imposed, charged or levied by any such jurisdiction.

ARTICLE 7. Maintenance, Termination and Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain, service, repair and/or overhaul, as necessary, each unit of Equipment so that each unit of Equipment will remain (a) in good operating condition (ordinary wear and tear excepted) for its intended purpose, (b) in compliance with any and all applicable laws and regulations and all mandatory safety bulletins issued by the Builder applicable to the Equipment, and (c) meet the standards then in effect under the interchange rules of the American Association of Railroads.

In the event that the Lease is terminated pursuant to the eighth and succeeding paragraphs of §7 of the Lease (a "Termination") or any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged or remains in an inoperable condition for six (6) consecutive months (excluding any period during which the Lessee is unable to repair same or make same operable due to labor strikes or other work stoppages, lockouts, or events beyond the reasonable control of the Lessee), from any cause whatsoever, or permanently returned to the Builder pursuant to any patent indemnity provision hereof, or should title to any unit of Equipment be taken or requisitioned by condemnation or otherwise by any governmental authority, or or should use of any unit of Equipment be taken or requisitioned by any governmental authority for a period exceeding six (6) consecutive months (any and all such occurrences being herein called "Casualty Occurrences"), the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Payment Date next succeeding such notice on or after the Casualty Occurrence or on the Termination Date (as defined in §7 of the Lease) in the case of a Termination (each such date being hereinafter called a "Settlement Date"), the Vendee shall pay to the Vendor (i) in the case of a Casualty Occurrence, an amount equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of such Settlement Date and (ii) in the case of a

Termination, a sum equal to the Termination Value (as hereinafter defined in this Article 7) of such unit subject to such Termination as of such Settlement Date. The Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of such unit, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on and of the CSA Indebtedness due on such date) to prepay the installments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such installment) together with all unpaid and accrued interest thereon, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. Concurrently with the payment of Termination Value for any unit effected by a Termination, the Vendee shall pay to the Vendor as a premium, the percentage of the principal amount of the CSA Indebtedness being prepaid in connection therewith, depending on the Settlement Date on which such prepayment occurs, as follows:

<u>Settlement Date</u>	<u>Premium</u>
5/31 or 11/30/95	8.75
5/31 or 11/30/96	7.50
5/31 or 11/30/97	6.25
5/31 or 11/30/98	5.00
5/31 or 11/30/99	3.75
5/31 or 11/30/00	2.50
5/31 or 11/30/01	1.25
5/30/02	0.00

In the event of the requisition of use by any governmental authority of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor (i) of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence or (ii) of the Termination Value of any unit in connection with a Termination, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's security title and interest, and the release of the Vendor's security interest, in such unit, in

recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the Settlement Date with respect to such unit (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such Settlement Date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Termination Value of any unit shall be equal to the Casualty Value thereof.

The Vendee will cause the Equipment to be insured as provided in the last paragraph of §7 of the Lease. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this Article 7, provided no Default shall have occurred and be continuing.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1986, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in §8 of the Lease.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in §5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Vendee will not permit the identification number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted

therefor, which statement previously shall have been filed with the Vendor and filed and deposited by the Vendee in all public offices where this Agreement shall have been filed and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee thereof or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all applicable laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement.

ARTICLE 12. Prohibition Against Liens. The Vendee will

pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the interest of the Vendor therein, or the Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's title or interests therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or the Lease or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment or the Lease shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from

and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment or its interest in the Lease, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any claim for patent, trademark or copyright infringement, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto or a security interest therein remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any breach of warranty or failure to perform any covenant hereunder by the Builder and except Taxes (as defined in the Lease) measured by net income. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the Vendor's security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of

1974, as amended.

The agreements of the parties relating to the Builder's warranty of material and workmanship and patent indemnification, and the agreement of the parties relating to the Builder's limitation of liability, are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement, except that all, but not less than all, of the right, title and interest of the Vendee in and to the Equipment, this Agreement and the Lease may be assigned, conveyed or transferred by the Vendee to (a) any bank, trust company, insurance company or other financial institution organized under the laws of the United States or any state and having a combined capital and surplus or net worth, as the case may be, of at least \$50,000,000, (b) any other company having a net worth of at least \$50,000,000 which at the time of transfer has outstanding publicly held debt securities rated A or better by a nationally recognized rating service or which, within one year prior to such transfer, has received such a rating on any debt issued by such company, in each case not dependent on an unaffiliated third party credit support, (c) any corporation which is an affiliate or subsidiary, wholly owned or otherwise, of the Vendee and (d) any corporation into or with which the Vendee shall merge or consolidate or which shall acquire the property of the Vendee as an entirety or substantially as an entirety (any such institution or corporation to whom such interest may be assigned, conveyed or transferred being hereinafter referred to as the "Transferee"). Notwithstanding the immediately preceding sentence, if the transfer occurs pursuant to (c) above, the transferor shall remain secondarily liable for all obligations of the Transferee unless the Transferee shall have a net worth of at least \$25,000,000 at the time of the transfer or, prior to the transfer, the Vendee enters into an amendment of the Conditional Sale Agreement, in form and substance satisfactory to the Agent, to the effect that it will constitute an event of default under the Conditional Sale Agreement if, without the prior written consent of the Agent, the Transferee while still the owner of such right, title and interest in and to the Equipment, this Agreement and the Lease at any time ceases to be a member of the Cargill Leasing Corporation affiliate group includible in the consolidated Federal income tax return of such group or a member of another parent company's affiliate group includible in the consolidated Federal income tax return of such group in respect of which the parent company meets the conditions set forth in clause (a) or (b) of the first sentence of this paragraph. In

the event of any such assignment, conveyance or transfer, the Transferee shall become a party to each of the Vendee's Documents and will agree to be bound by all the terms of and will undertake all of the obligations of the Vendee contained in its Documents in such manner as is satisfactory to the Lessee and the Agent.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee at such address as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vender hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the

Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) default shall be made in the observance or performance of any other of the conditions and agreements on the part of the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee contained herein or in the Participation Agreement or the Lease Assignment or the Consent, and such default shall continue for 30 days after the earlier of (i) written notice from the Vendor to the Vendee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any responsible officer of the Vendee (the term "known to any responsible officer of the Vendee" shall mean actual knowledge by a responsible officer of the Vendee having familiarity with the transactions contemplated hereby); or

(c) the Vendee shall make an assignment for the benefit of creditors or shall fail generally to pay its debts as they become due; or any order, judgment or decree shall be entered adjudicating the Vendee bankrupt or insolvent; or the Vendee shall petition or apply to any tribunal for the appointment of a trustee, receiver, custodian or liquidator of the Vendee or of any substantial part of its assets or shall commence any proceedings relating to the Vendee or any substantial part of its assets under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect; or any such petition or application shall be filed, or any such proceedings shall be commenced, against the Vendee and the Vendee by any act shall indicate its approval thereof, consent thereto or acquiescence therein; or

(d) any order, judgment or decree shall be entered

appointing any such trustee, receiver, custodian or liquidator or approving a petition in any such proceedings and such order, judgment or decree shall remain unstayed and in effect for more than 60 days; or any order, judgment or decree shall be entered in any proceedings against the Vendee decreeing its dissolution and such order, judgment or decree shall remain unstayed and in effect for more than 60 days; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession or use of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) an Event of Default shall have occurred under the Lease (other than an Event of Default described in clauses (A) or (C) of § 10 of the Lease relating to the Tax Indemnity Agreement referred to therein);

then at any time after the occurrence of such an event of default and so long as such event of default is continuing the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the proviso in the second paragraph of §4 of the Lease relating to termination and to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, cause the Lease immediately upon such notice to terminate, but the Lessee shall remain liable as therein provided and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

Notwithstanding anything to the contrary contained in this Article 15, if the Lessee shall fail to make any payment of rental pursuant to the first paragraph of §3 of the Lease when the same shall have become due, and if such failure of the Lessee to make such payment of rental shall not constitute the third or subsequent consecutive failure or the fifth or subsequent

cumulative failure, then as long as no other event of default shall have occurred and be continuing hereunder (other than an event of default referred to in the next following paragraph which is concurrently being cured as provided therein) the Vendee may (but need not) pay to the Agent, at any time prior to the expiration of 5 days after the Vendee shall have received notice or have actual knowledge of the failure of the Lessee to have made such payment of rental, an amount equal to the amount of the principal of and interest due on the CSA Indebtedness on or prior to such date, together with any Overdue Interest due thereon on account of the delayed payment thereof, and such payment by the Vendee shall be deemed to cure any event of default hereunder which arose or would have arisen solely from such failure of the Lessee to pay such rental.

If the Lessee shall fail to make any other payment under the Lease or to otherwise fail to perform any obligation under the Lease or the Participation Agreement which is by its nature susceptible of cure by a party other than the Lessee, then so long as no other event of default hereunder shall have occurred and be continuing (other than an event of default which is concurrently being cured as provided in the immediately preceding paragraph), the Vendee may (but need not) make such payment or perform such obligation at any time prior to the expiration of 20 days after the Vendee shall have received notice or have actual knowledge of such failure, and such payment or performance by the Vendee shall be deemed to have cured the event of default hereunder which arose or would have arisen solely from such failure of the Lessee.

The Vendee, upon exercising any of its rights under either of the two immediately preceding paragraphs, shall not obtain any lien, charge or security interest on the Equipment or any part thereof or any other properties in which the Agent has a security interest on account of such payment or performance or the costs and expenses incurred in connection therewith, nor shall any claims of the Vendee against the Lessee or any other party for the repayment thereof impair the prior right and security interest of the Agent in and to the Equipment and such other properties (including the Lease). However, upon such payment or performance by the Vendee, if no event of default hereunder shall have occurred and be continuing, and if all principal, premium (if any) and interest due on the CSA Indebtedness shall have been paid, the Vendee shall be entitled to receive the amount of rentals in respect of which such payments shall have been made, together with interest thereon, from the Lessee or, if paid to the Agent, from the Agent. If the Agent or the Vendee shall receive such payment at a time when an event of default hereunder shall have occurred and be continuing, the amount thereof (except to the extent that such payment is

excluded from the definition of "Payments" under the Lease Assignment (as defined in the Participation Agreement)) shall be retained by or turned over to the Agent for application in accordance with the provisions of the Lease Assignment.

The Vendor may, at its election, subject to the provisions of Section 1 of the Lease Assignment, waive any such event of default hereunder and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon. It is agreed between the parties hereto that, at any time after an Event of Default under the Lease and prior to the disposition of the Equipment by the Vendor or the entering into of a binding agreement by the Vendor to do so, the Vendee may prepay in whole the CSA Indebtedness without premium, together with accrued interest thereon to the date of such prepayment.

Upon payment in whole of the CSA Indebtedness, together with accrued accrued interest thereon to the date of such prepayment, absolute right to the possession of, title to and property in the Equipment shall thereupon pass to and vest in the Vendee as provided in Article 5 hereof.

ARTICLE 16. Remedies. Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease and the rights of the Vendee under Article 15 hereof, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or any portion thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner cause the Equipment to be placed upon such storage tracks at such site within a 750 mile radius of Superior, Wisconsin or Decker, Montana, as the Vendor may designate; and

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor (but in no event beyond expiration of the period of 730 days following December 31, 2002; and

During any storage period referred to in clauses (a) and (b), above, the Vendee will, at its own cost and expense, insure (to the same extent as provided in § 7 of the Lease), maintain and keep each such unit in good order and repair (to the same extent as provided in the first paragraph of Article 7 hereof) and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however,

that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, however, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease and the rights of the Vendee under the second and third paragraphs of Article 15 hereof, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale or the making of a contract for such sale not less than 10 business days prior thereto, by telegram or registered mail. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any

amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorney's fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto, to be filed in accordance with 49 U.S.C. §11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada; and the Vendee will from time to time do and perform any other act

and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly made if delivered or mailed to it by registered mail (unless otherwise specifically required herein), postage prepaid, at the following addresses:

(a) to the Lessee, at 2000 Second Avenue, Detroit, Michigan 48226, Attention: Secretary,

(b) to the Builder at its address specified in Item 1 of Annex A hereto,

(c) to the Assignee, at its address at P.O. Box 2258, 2 Hopkins Plaza, Baltimore, Maryland 21203, Attention of Corporate Trust Department,

(d) to the Vendee at its address set forth on the signature page of the Participation Agreement,

(e) to any assignee of the Vendor or Assignee, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor or the Assignee, as the case may be, and to the Lessee, by such assignee.

or at such other address as may have been furnished in writing by such party to the other parties referred to above.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second paragraph of Article 16 (including the provisions thereof with respect to insurance, maintenance and repair) and under Articles 3, 6, 7 (other than the third and fourth sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default pursuant to Article 15 hereof.

ARTICLE 22. Law Governing. The Vendee warrants that its chief place of business is located in the state of Minnesota and agrees to notify all other parties hereto in writing if it proposes to change such chief place of business, such notice to specify the proposed new place. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The parties hereto hereby irrevocably consent to the jurisdiction of any federal or state court sitting in the City and State of New York in respect to any claim or dispute arising hereunder.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the CSA Agreement shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are,

respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

ORTNER FREIGHT CAR COMPANY

[Corporate Seal]

By George Gates
Title: President

Attest:

J. R. Dunham
Attesting Secretary
Asst.

CARGILL LEASING CORPORATION

[Corporate Seal]

By _____
Title: Executive Vice President

Attest:

Assistant Secretary

respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

ORTNER FREIGHT CAR COMPANY

[Corporate Seal]

By _____
Title: _____

Attest:

Attesting Secretary

CARGILL LEASING CORPORATION

[Corporate Seal]

By *Arthur L. Hummer*
Title: Executive Vice President

Attest:
M.A. Fuschner
Assistant Secretary

STATE OF OHIO)
) ss.:
COUNTY OF HAMILTON)

On this 2 day of ^{January, 1985} ~~December 1984~~, before me personally appeared Gerry Yates, to me personally known, who, being by me duly sworn, says that he is a President of ORTNER FREIGHT COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Linda F. Nantz
Notary Public
My Commission Expires

[Notarial Seal]

LINDA F. NANTZ
Notary Public, State of Ohio
My Commission Expires Aug. 4, 1988

SCHEDULE I

Schedule of Principal Payments of Each \$1,000,000 of
14.49% CSA Indebtedness Payable in Installments on the 37
consecutive dates commencing May 31, 1985

<u>Payment Date</u>	<u>Interest</u>	<u>Total Debt Service</u>	<u>Principal Repayment</u>	<u>Outstanding Balance</u>
05/31/85	42,866.25*	54,945.45*	12,079.20	987,920.80
11/30/85	71,574.86	82,310.29	10,735.43	977,185.37
05/31/86	70,797.08	82,310.30	11,513.22	965,672.15
11/30/86	69,962.95	82,310.30	12,347.35	953,324.80
05/31/87	69,068.38	82,310.29	13,241.91	940,082.89
11/30/87	68,109.01	82,310.30	14,201.29	925,881.60
05/31/88	67,080.12	82,310.29	15,230.17	910,651.43
11/30/88	65,976.70	82,310.30	16,333.60	894,317.83
05/31/89	64,793.33	82,310.30	17,516.97	876,800.86
11/30/89	63,524.22	82,310.29	18,786.07	858,014.79
05/31/90	62,163.17	73,872.16	11,708.99	846,305.80
11/30/90	61,314.86	71,602.40	10,287.54	836,018.26
05/31/91	60,569.52	73,178.24	12,608.72	823,409.54
11/30/91	59,656.02	70,750.01	11,093.99	812,315.55
05/31/92	58,852.26	72,456.91	13,604.65	798,710.90
11/30/92	57,866.60	69,836.89	11,970.29	786,740.61
05/31/93	56,999.36	71,678.63	14,679.27	772,061.34
11/30/93	55,935.84	68,851.65	12,915.81	759,145.53
05/31/94	55,000.09	81,935.18	26,935.09	732,210.44
11/30/94	53,048.65	76,363.31	23,314.66	708,895.78
05/31/95	51,359.50	79,769.18	28,409.68	680,486.10
11/30/95	49,301.22	74,297.73	24,996.51	655,489.59
05/31/96	47,490.22	78,143.54	30,653.32	624,836.27
11/30/96	45,269.39	72,240.24	26,970.85	597,865.42
05/31/97	43,315.35	76,389.92	33,074.57	564,790.85
11/30/97	40,919.10	70,020.33	29,101.23	535,689.62
05/31/98	38,810.71	74,497.79	35,687.08	500,002.54
11/30/98	36,225.18	67,625.08	31,399.90	468,602.64
05/31/99	33,950.26	72,456.21	38,505.95	430,096.69
11/30/99	31,160.51	65,040.65	33,880.14	396,216.55
05/31/00	28,705.89	70,253.37	41,547.48	354,669.07
11/30/00	25,695.77	62,252.06	36,556.29	318,112.78
05/31/01	23,047.27	75,253.42	52,206.15	265,906.63
11/30/01	19,264.94	97,032.95	77,768.01	188,138.62
05/31/02	13,630.64	97,032.95	83,402.31	104,736.31
11/30/02	7,588.15	97,032.95	89,444.80	15,291.51
12/31/02	184.64	15,476.15	15,291.51	(-.00)

TOTALS

* Interest payable will vary on Closing Dates.

Annex A
to
Conditional Sale Agreement

- Item 1: Ortner Freight Car Company, a Delaware corporation with an address at 2652 Erie Avenue, Cincinnati, Ohio 45208, attention of Vice President.
- Item 2: The Equipment shall be settled for in such number of Groups of units delivered to and accepted by the Vendee as shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the CSA to which this Annex A is attached (the "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligations under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Lessee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, except for its obligations or liabilities under Article 2, 3, 4, and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid. In no event shall the Builder be liable for special or consequential damages.
- The Builder further agrees with the Vendee and the Lessee that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee and the Lessee of any of their rights under this Item 3.
- Item 4: The Builder agrees to indemnify, protect and hold harmless the Vendee from and against any and all liability, claims, costs, charges and expenses,

including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns or the Lessee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right, except any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns, or the Lessee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination specified by the Lessee and not developed or purported to be developed by the Builder or any article or material specified by the Lessee and not manufactured by the Builder. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is \$17,000,000.00.

Item 6: The Maximum CSA Indebtedness referred to in Article 4 of the Agreement is \$11,000,000.00.

Annex B
to
Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Base Price*</u>	<u>Estimated Time and Place of Delivery</u>
Ortner Freight Car Company	108 Ton, 4,320 cu. ft. aluminum bodied-steel underframed, rotary dump, gondola rail cars	Ortner Freight Car Co. Mount Orab, Ohio	183	DEEX 7601-7783	\$45,336.58	January 1985 DeCoursey Yard Covington, Kentucky
			183	DEEX 7784-7966	\$45,336.58	February, 1985 DeCoursey Yard Covington, Kentucky

* includes \$200 of prepaid freight, storage and insurance charges

ANNEX C
TO
CSA

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1984

between

THE DETROIT EDISON COMPANY, Lessee

and

CARGILL LEASING CORPORATION, Lessor

Recordation No. _____ Filed & Recorded _____
Interstate Commerce Commission

TABLE OF CONTENTS*

		<u>Page</u>
§ 1.	Net Lease.....	1
§ 2.	Delivery and Acceptance of Units.....	2
§ 3.	Rentals.....	3
§ 4.	Term of Lease.....	6
§ 5.	Identification Marks.....	6
§ 6.	Taxes.....	7
§ 7.	Maintenance; Casualty Occurrences; Insurance; Termination.....	11
§ 8.	Reports.....	17
§ 9.	Disclaimer of Warranties; Compliance with Laws and Rules; Additions, Modifications and Improvements; Indemnification.....	18
§ 10.	Default.....	22
§ 11.	Return of Units upon Default.....	25
§ 12.	Assignment; Possession and Use.....	27
§ 13.	Renewal Options; Duty to First Offer.....	28
§ 14.	Return of Units upon Expiration of Term.....	30
§ 15.	Recording.....	31
§ 16.	Interest on Overdue Rentals.....	32
§ 17.	Notices.....	32
§ 18.	Severability; Effect and Modification of Lease.....	32
§ 19.	Execution.....	33
§ 20.	Law Governing.....	33

* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1984, between THE DETROIT EDISON COMPANY, a Michigan corporation (the "Lessee"), and CARGILL LEASING CORPORATION, a Delaware corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Ortner Freight Car Company (the "Builder"), wherein the Builder has agreed to manufacture, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mercantile-Safe Deposit and Trust Company acting as Agent (hereinafter, together with its successors and assigns and the Investor, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor and the Investor named therein (said investor, together with its successors and assigns, being hereinafter called the "Investor");

WHEREAS the Lessee desires to lease such number of units of Equipment as are delivered and accepted and settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent or any other amounts payable by it hereunder or under the Tax Indemnity Agreement dated as of the date hereof between the Lessee and the Lessor (the "Tax Indemnity Agreement") (all such rent, additional rent and other amounts are referred to collectively in this §1 as "Rent"), or setoff against or recoupment or reduction of Rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or

counterclaims of the Lessee against the Lessor under this Lease or the CSA or otherwise, or against the Builder or the Vendor or any other person or for any other reason whatsoever. The Lessee's obligations hereunder, including its obligations to pay all Rent, shall be absolute and unconditional under any and all circumstances except as specifically provided herein or in the Tax Indemnity Agreement, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that all Rent payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever except manifest error.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") substantially in the form annexed hereto as Schedule C, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph

of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

§ 3. Rentals. Rental for the Units shall accrue over thirty-seven consecutive periods. (Each of these 37 periods is hereinafter called a "Rental Accrual Period" and the last day of each Rental Accrual Period is hereinafter called a "Rental Payment Date".) The first Rental Accrual Period shall commence on the first day of the term of this Lease and each subsequent Rental Accrual Period shall commence on the day following the end of the preceding Rental Accrual Period. The first Rental Accrual Period shall end on May 31, 1985, the next thirty-five Rental Accrual Periods shall end on the thirty-five consecutive dates occurring semi-annually on each November 30 and May 31 thereafter, and the thirty-seventh Rental Accrual Period shall end on December 31, 2002. Rental shall accrue during each of the Rental Accrual Periods in an amount equal to the Lease Factor (as hereinafter defined) multiplied by Lessor's Cost (as hereinafter defined) of each Unit subject to this Lease on the first day of the respective Rental Accrual Period. As used herein, the term "Lease Factor" means 3.1576% with respect to the First Rental Accrual Period, 4.7302% with respect to each of the 17 Rental Accrual Periods occurring after the first Rental Accrual Period, 5.7666% with respect to each of the next 18 Rental Accrual Periods, and .9614% with respect to the last Rental Accrual Period. As rental for the Units, except as provided below in this §3, the Lessee agrees to pay to the Lessor on each Rental Payment Date an amount equal to the rental that accrued during the Rental Accrual Period that includes the respective Rental Payment Date. The Term "Lessor's Cost" of a Unit shall mean the Purchase Price of such Unit as defined in the CSA.

Each of the foregoing Lease Factors has been calculated based on the following assumptions:

(a) that (i) no Tax Assumptions (as such term is defined in Section 2 of the Tax Indemnity Agreement) shall become inaccurate as a result of a change in the Internal Revenue Code of 1954, as amended, or any income tax or franchise tax laws of Minnesota (said Code and State laws are herein collectively referred to as the "Income Tax Laws"), which is enacted or effective on or before December 31, 1985, and/or (ii) no Tax Assumptions (other than that described in clause (k) of Section (2) of the Tax Indemnity Agreement) shall become inaccurate as a result of a change in any regulation, administrative interpretation or judicial decision under any of the Income Tax Laws which is published (in proposed, temporary or final form) and effective on or before December 31, 1985, and/or (iii) the Tax Assumption described in clause (k) of Section (2) of the Tax

Indemnity Agreement shall not become inaccurate as a result of a change in any regulation, administrative interpretation or judicial decision under any of the Income Tax Laws which is published (in proposed, temporary or final form) or effective on or before December 31, 1985;

(b) that no Closing Date (as such term is defined in the Participation Agreement) shall occur before January 31, 1985 and the end of each month thereafter through May 31, 1985; and

(c) that the Transaction Expenses (as such term is defined in Section 13 of the Participation Agreement) paid by the Lessor thereunder shall equal zero.

If any of the foregoing assumptions is incorrect, the Lease Factors and the dates on which rental is payable shall be adjusted to amounts and dates which will: (i) enable the Lessor to realize the same after-tax rate of return on funds invested by the Lessor in the transactions contemplated hereby and periodic recovery of after-tax cash flows from such transactions (calculated using the same assumptions, including the Assumptions, originally employed by the Lessor in evaluating such transactions) which the Lessor would have realized had all such assumptions been correct; and (ii) comply with the provisions of clauses (i) or (ii) of Section 5.01 of Rev. Proc. 75-21, 1975-1 C.B. 715 (the "Uneven Rent Test"). The assumption contained above in subparagraph (a)(iii) shall not be deemed to be incorrect for purposes of this §3 if it would not have been incorrect but for the fact that the rentals payable pursuant to this §3 (either prior to or after adjustment pursuant to the preceding sentence) do not comply with the Uneven Rent Test or any substantively identical test contained in any regulation or administrative interpretation which is published (in proposed, temporary or final form) or effective on or before December 31, 1985. Notwithstanding the foregoing, if the assumption described in clause (a) is incorrect and the "Present Value" of the rental increase resulting therefrom that would be payable by the Lessee with respect to Units other than "Excludable Units" would exceed the "Cap", the Lease Factors applicable to the computation of rentals payable with respect to Units other than Excludable Units shall be reduced so that the Present Value of the rental increase payable by the Lessee with respect to those Units equals the Cap. In making the computations and adjustments required by the preceding sentence it shall be assumed that all Units listed in Schedule A hereto other than "Excludable Units" will be subject to the Lease for the entire term of the Lease. As used in this paragraph the following terms have the following meanings:

(a) "Present Value" means the value on December 1, 1984 of the aggregate rental increases discounted from the

respective Rental Payment Dates hereunder at the rate of 11.3% per annum and computed on the basis of a 360-day year of 12 thirty day months.

(b) "Excludable Units" means Units which the Lessee has the right to exclude from this Lease pursuant to Section 14 of the Participation Agreement.

(c) "Cap" means \$700,000 multiplied by a fraction the numerator of which is the aggregate Lessor's Cost for all Units listed in Schedule A hereto other than Excludable Units and the denominator of which is the aggregate Lessor's Cost for all Units listed in Schedule A hereto. Upon adjustments in the Lease Factors in accordance with the foregoing provisions of this Section, the percentages set forth in Schedule B and in Schedule D hereto shall be correspondingly adjusted for the same purpose. Any adjustments pursuant to this paragraph shall be reflected in a written amendment to this Lease executed and delivered by the Lessor and the Lessee. If the Lessee reasonably disputes the method by which any adjustments under this paragraph are calculated, such calculation shall be verified or corrected by the Lessor's independent auditors, at the expense of the Lessee, and such auditors' calculation shall be binding upon both the Lessor and the Lessee. The Lessor shall furnish such auditors with its calculations and the assumptions on which they were made to enable such auditors to make such verifications or calculations, but such information shall be held in confidence by such auditors and the Lessee shall have no right to access thereto. Such auditors shall be required to furnish to the Lessor and the Lessee a written report verifying or correcting such calculation.

Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value and Termination percentages, as adjusted pursuant to this § 3 or the Tax Indemnity Agreement, shall be sufficient to satisfy the obligations of the Lessor under the CSA regardless of any limitation of liability set forth therein and the dates on which rental is payable shall in any event be consistent with the Lessor's payment obligations under the CSA.

If any of the Rental Payment Dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York City, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this §3 and in §7 hereof, but excluding all payments not assigned to the Vendor pursuant to the Lease Assignment, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and, second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph by wire transfer of immediately available funds to the Vendor by 11:00 a.m., New York City time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3 hereof. The obligations of the Lessee hereunder (including but not limited to, the obligations under §§ 3, 6, 7, 9 and 14 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under §12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Owned by Cargill Leasing Corporation. Ownership subject to a Conditional Sale Agreement filed under 49 U.S.C. §11303", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in

such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. Taxes. The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor, the Investor and the Vendor and their servants, agents, employees, officers, directors, successors and assigns (the "Indemnified Persons") against, all taxes, fees, withholdings, levies, imposts, duties, license and registration fees and other governmental charges of any nature whatsoever, including without limitation penalties, additions to tax and interest (all such taxes, fees, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any thereof or the ownership, delivery, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or

measured by any fees or compensation received by the institution who is the Vendor, (ii) Federal income Taxes and income or franchise Taxes imposed on the Investor or its successors and assigns with respect to interest paid on the CSA Indebtedness, (iii) Federal income taxes and income or franchise taxes imposed on the Lessor or its successors or assigns by the State in which its principal office is located or any taxing authority or jurisdiction therein and (iv) Taxes payable by the Lessor as a result of any transfer of any of its interest in the Equipment unless such transfer is made during the continuance of an Event of Default hereunder. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within thirty (30) days after receipt of a written demand for indemnification from the Indemnified Person specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA (other than the proviso to the third paragraph of Article 12 thereof) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any State or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall

indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization. The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this Section 6 shall be an amount sufficient so that, after considering the tax and other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same anticipated after-tax rate of return on equity and periodic recovery of after-tax cash flow as such Indemnified Person would have realized had such Taxes not been incurred or imposed.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

If any claim is made against any Indemnified Person or if any proceeding is commenced against any Indemnified Person for any Taxes as to which the Lessee has an indemnity obligation pursuant to this § 6, such Indemnified Person shall promptly notify the Lessee. The failure to provide such notice shall not affect the Lessee's obligations hereunder to any Indemnified Person, but the Lessee shall not be precluded from seeking compensation for damages resulting from the failure of an Indemnified Person (other than the Investor or the Vendor) to produce such notice. If reasonably requested by the Lessee in writing, upon determination by such Indemnified Person (which determination shall be reasonable) that the action to be taken will not result in any substantial risk of consequences materially adverse to it and that the action to be taken will not

result in any material danger of sale, forfeiture or loss of, or the creation of any liens (except if the Lessee shall have adequately bonded such lien or otherwise made provision to protect the interests of such Indemnified Person in a manner satisfactory to such Indemnified Person) on the Units or any thereof, such Indemnified Person shall upon receipt of indemnity satisfactory to it and at the expense of the Lessee (including, without limitation, all costs, expenses, attorneys' and accountants' fees and disbursements, penalties and interest) in good faith contest the validity, applicability or amount of such Taxes by, in such Indemnified Person's sole discretion, (A) resisting payment thereof, (B) not paying the same except under protest, if protest is necessary and proper, or (C) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Any contest required pursuant to the preceding sentence shall, at the option of such Indemnified Person, be conducted by such Indemnified Person or the Lessee in the name of the Lessee or such Indemnified Person. At the request of the Lessee, the Indemnified Person will permit the Lessee to conduct the contest so long as the contested liability is the only contested liability of the Indemnified Person then pending or threatened before the respective taxing authorities. In the case of any contest conducted by the Lessee the Indemnified Person will take or join in any action reasonably requested by the Lessee with respect thereto. If any such contest involves payment of the Tax in question, the Lessee shall either make such payment directly to the appropriate authority or furnish to such Indemnified Person sufficient funds to make such payment. The Lessee agrees to give such Indemnified Person reasonable notice of any contest prior to the date by which it must be commenced. If any Indemnified Person obtains a refund of all or any part of any Tax paid or reimbursed by the Lessee and if no Event of Default or event with which the giving of notice and/or passage of time would become an Event of Default shall have occurred and be continuing such Indemnified Person shall promptly pay to the Lessee the amount of such refund net of expenses not already paid or reimbursed by the Lessee; provided, however, that the aggregate amount of all payments with respect to any Taxes made by the Indemnified Person to the Lessee pursuant to this sentence shall not exceed the aggregate amount of all payments made by the Lessee to such Indemnified Person pursuant to § 6 with respect to such Taxes. If in addition to such refund such Indemnified Person shall receive an amount representing interest on the amount of such refund, the Lessee shall promptly be paid that portion of such interest that is fairly attributable to Taxes paid or reimbursed by the Lessee prior to the receipt of such refund. Nothing contained herein shall require any Indemnified Person to contest or permit the Lessee to contest a claim which it would otherwise be required to contest if such Indemnified Person shall waive payment by the Lessee of any amount that might otherwise be

payable by the Lessee under this § 6 by way of indemnity in respect of such claim.

This § 6 may be enforced by the Lessor as provided in Paragraph 18 of the Participation Agreement.

§ 7. Maintenance; Casualty Occurrences; Insurance; Termination. The Lessee at its own expense will maintain, service, repair and/or overhaul, as necessary, each Unit so that each Unit will remain (a) in good operating condition (ordinary wear and tear excepted) for its intended purpose, (b) in compliance with any and all applicable laws and regulations and all mandatory safety bulletins issued by the Builder applicable to the Equipment, and (c) meet the standards then in effect under the interchange rules of the American Association of Railroads. The Lessee shall not discriminate between the Equipment and such other similar equipment to the detriment of the Equipment in its maintenance procedures and practices. The standard level of maintenance generally followed by the Lessee as of the date hereof with respect to equipment similar to the Equipment operated, owned or leased by it shall not be materially reduced during the term of this Lease (or any renewal term). The Lessor, at its sole expense, shall have the right to audit the Lessee's maintenance program applicable to the Equipment and any written document or record with respect thereto for the purpose of verifying the standard level of maintenance generally followed by Lessee. Such audit and inspection shall take place in the calendar year 1985 and the Lessee shall cooperate with the Lessor in such audit. The Lessee does not represent that the Lessor's determination is in fact such standard level of maintenance. Should the Lessor claim that the standard level of maintenance generally followed by the Lessee has been materially reduced and if the Lessee disagrees with such claim, such issue shall be resolved, and its remedy determined, exclusively by binding arbitration conducted in Detroit, Michigan, under the aegis of the American Arbitration Association. All expenses of such arbitration will initially be paid for by the Lessor; provided, however, that if such arbitration determines that there has been a material reduction in the standard level of maintenance generally followed by the Lessee, the Lessee shall reimburse the Lessor for all such arbitration expenses paid by the Lessor.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, or remains in an inoperable condition for six (6) consecutive months (excluding any period during which the Lessee is unable to repair same or make same operable due to labor strikes or other work stoppages, lockouts, or events beyond the reasonable control of the Lessee) from any cause whatsoever, or permanently returned to the Builder

pursuant to any patent indemnity provision of the CSA prior to the return of such Unit in the manner set forth in § 14 hereof, or should title to any Unit be taken or requisitioned by condemnation or otherwise by any governmental authority, or should use of any Unit be taken or requisitioned by any governmental authority for a period exceeding six (6) consecutive months (such occurrences being hereinafter called "Casualty Occurrences"), the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor and the Vendor with respect thereto. On the Rental Payment Date next succeeding such notice or the last day of the then current renewal term, whichever first occurs after such Casualty Occurrence, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such Rental Payment Date or such day in accordance with Schedule B hereto referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

The Casualty Value of each Unit as of any Rental Payment Date or the last day of any renewal term shall be the sum of (x) that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date plus (y) an amount, if any, determined by reference to the footnote set forth in said Schedule B, except that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value shall be the Fair Market Purchase Price of such Unit, as of

the first day of each applicable renewal term, determined in accordance with the provisions of § 13 hereof.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 or § 13 hereof and before such Unit shall have been disposed of in the manner provided in this § 7, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (except after such requisition has become a Casualty Occurrence) of use by any governmental authority (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof and prior to such use having become a Casualty Occurrence shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after such use shall have become a Casualty Occurrence, shall be paid over to, or retained by, the Lessee, up to an amount equal to the Casualty

Value actually paid by the Lessee in respect thereof, and all such payments in excess thereof shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligation hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained with insurance carriers to the good faith and reasonable satisfaction of the Lessor and the Vendor physical damage insurance and public liability insurance in respect of the Units at the time subject hereto, against such reasonable risks, in such reasonable amounts and on such reasonable terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent public utility industry standards for such leased equipment, nor shall the amount of physical damage insurance for any Unit be less than the Casualty Value payable from time to time for such Unit. All policies with respect to such insurance shall name the Lessor and the Vendor as additional named insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor and the Vendor in the event of cancellation, expiration or amendment, shall include waivers by the insurer of all claims for premiums against the Lessor and the Vendor, shall provide that losses are payable notwithstanding, among other things, any act, omission or neglect of the Lessee, the Lessor or the Vendor, any breach or violation by the Lessee, the Lessor or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units and shall contain provisions whereby the insurance carrier waives all rights of subrogation which it may have against any named insured therein or loss payee thereunder. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor or the Vendor. The Lessee shall furnish to the Lessor and the Vendor a certificate of an

independent insurance broker reasonably acceptable to Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies, but in no event less than once a year. If the Lessor shall receive any insurance proceeds or condemnation payments or any payments from the American Association of Railroads in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or payments shall remain the property of the Lessor. If the Lessor shall receive any insurance proceeds in respect of any Unit not suffering a Casualty Occurrence, all such proceeds shall be paid to the Lessee upon proof to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this § 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

In the event that the Lessee shall during the original term hereof, in its reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the Lessee's business, as determined in good faith by the Vice President of Operations of the Lessee, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor and the Vendor, to terminate (which act shall hereinafter be called the "Termination") this Lease as to all but not less than all of such Units as of any succeeding Rental Payment Date specified in such notice (such termination date so specified being hereinafter called there "Termination Date"); provided, however, that (i) the Termination Date shall be not earlier than May 31, 1995, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date or on the date on which the notice of such Termination shall be given and (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 14 hereof.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids (and the Lessor may at its option obtain additional bids) for the purchase of each such Unit, and the Lessee shall at least five business days prior to

such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any other party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date, the Lessor shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor with respect to the Units an amount equal to the sum of (i) the amount, if any, by which the Termination Value (as hereinafter defined) for the Units computed as of such date exceeds the sale price of the Units so sold after the deduction of all expenses incurred by the Lessor in connection with such sale plus (ii) the rental payment with respect to the Units due on such Termination Date plus (iii) an amount equal to the premium payable under Article 7 of the CSA in respect of the prepayment of the principal of the CSA Indebtedness resulting from such Termination. The Termination Value of each such Unit as of the Termination Date shall be the percentage of Lessor's Cost of such Unit set forth in Schedule D hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Lessor and payments of rental and Termination Value received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) with respect to the Units as of such Termination Date.

Except as is provided in the last paragraph of this § 7, if no sale of all the Units shall occur on the Termination Date with respect thereto as provided above, no Termination shall occur with respect to any of the Units and this Lease shall continue in full force and effect without change.

Upon the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to §3 hereof in respect of such Units on each Rental Payment Date shall continue to and including the Termination Date but shall terminate after the Termination Date. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to effect a Termination, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given within 90 days after the termination notice is given to the Lessor and upon satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, elect to retain such Units, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor. In the event the Lessor shall so elect to retain such Units and delivers to the Lessee evidence of the satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, the Lessee shall deliver such Units to the Lessor in accordance with the provisions of §14 hereof.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1986, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Vice President-Operations of the Lessee or another qualified person satisfactory to the Lessor and the Vendor (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and such other information regarding the condition and state of repair of any Units identified pursuant to § 8(c) hereof as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced, (c) setting forth the identification numbers of all Units (other than the Units identified in clause (a) of this §8 as having suffered a Casualty Occurrence) which are then not in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof, except for those failing to be in such condition solely because they are then undergoing running repairs. Every 90 days after such identification and certification of any Units pursuant to clause (c) of the next preceding sentence, until such Units are either (i) returned to the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof, or (ii) deemed to have suffered a Casualty Occurrence under § 7 hereof, the Lessee will furnish a supplemental certificate of a qualified person satisfactory to the Lessor and the Vendor setting forth the identification number of each Unit that was not certified in the preceding annual certificate as being in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof, and, as to each such Unit, (i) certifying that such Unit is in such condition as of the date of such supplemental certificate, or (ii) stating that such Unit is not in such condition. The Lessor, at its sole expense, shall have the right by its agents to audit the Lessee's maintenance program applicable to the

Equipment and to inspect the Units and the Lessee's records with respect thereto at such reasonable times during normal business hours as the Lessor may reasonably request during the continuance of this Lease but the Lessor shall have no obligation to do so. The Lessee shall promptly notify the Lessor and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Additions, Modifications and Improvements;

Indemnification. NEITHER THE LESSOR NOR THE VENDOR NOR THE INVESTOR MAKES ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE LESSOR NOR THE VENDOR NOR THE INVESTOR MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR, THE VENDOR OR THE INVESTOR IN CONTRAVENTION OF THE SECOND PARAGRAPH OF § 12 HEREOF), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as among the Lessor, the Vendor, the Investor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor, the Vendor or the Investor shall not have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described

therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor, the Vendor or Investor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor, the Investor and the Vendor, and their respective successors, assigns, employees, officers, directors, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, reasonable costs, reasonable disbursements, reasonable expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Lessor's or the Vendor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from the gross negligence or willful misconduct of the person otherwise to be indemnified hereunder. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suits or proceeding is brought against any Indemnified Person, in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by

such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to so do, the Lessee shall pay all reasonable costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and each Indemnified Person agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been paid as aforesaid. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter. Nothing herein contained shall constitute a guaranty by the Lessee of the CSA Indebtedness under the CSA or a guaranty of the residual value of any Unit.

The Lessee further agrees to indemnify, protect and hold harmless each Indemnified Person from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Indemnified Person because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder. This paragraph and the immediately preceding paragraph may be enforced by the Lessor as provided in Paragraph 20 of the Participation Agreement.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units, or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3, 6, 7, 9, 13, or 16 hereof or under the Tax Indemnity Agreement, and such default shall continue for five business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) default shall be made in observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement or in the Tax Indemnity Agreement, and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

(D) Any representation or warranty made by the Lessee herein or in the Consent or in the Participation Agreement or in any agreement, document or certificate delivered by the Lessee in connection herewith or therewith (other than the Tax Indemnity Agreement) shall prove to have been incorrect in any material respect when made or given;

(E) the Lessee shall make an assignment for the benefit of creditors or shall fail generally to pay its debts as they become due; or any order, judgment or decree shall be entered adjudicating the Lessee bankrupt or insolvent; or the Lessee shall petition or apply to any tribunal for the appointment of a trustee, receiver, custodian or liquidator of the Lessee

or of any substantial part of its assets or shall commence any proceedings relating to the Lessee or any substantial part of its assets under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect; or any such petition or application shall be filed, or any such proceedings shall be commenced, against the Lessee and the Lessee by any act shall indicate its approval thereof, consent thereto or acquiesce therein; or

(F) any order, judgment or decree shall be entered appointing any such trustee, receiver, custodian or liquidator or approving a petition in any such proceedings and such order, judgment or decree shall remain unstayed and in effect for more than 60 days; or any order, judgment or decree shall be entered in any proceedings against the Lessee decreeing its dissolution and such order, judgment or decree shall remain unstayed and in effect for more than 60 days;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease and enjoy the same freedom from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such

full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify, (i) a sum, with respect to each Unit, which represents (w) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term, or current renewal term, of this Lease as to such Unit over the then present value of the rental (determined (at the Lessee's expense) by an independent appraiser) to be obtainable for such Unit during such period (to be computed on the basis of a 11.3% per annum discount, computed semiannually for the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (x) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) the sum of (y) an amount, as liquidated damages for loss of a bargain and not as a penalty, equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding date of termination (or, if such termination occurs during a renewal term hereof, the Casualty Value applicable during such renewal term) over the amount determined by an independent appraiser (at the Lessee's expense) to be fair market sales value of such Unit at such time plus (z) any amounts described in clause (x) above; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) (y) with respect to such Unit, shall demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Rental Payment Date on or next preceding the date of termination (or, if such termination occurs during a renewal term hereof, the Casualty Value applicable during such renewal term) over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies

with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit pursuant to this § 10.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

If the Lessee fails to perform or comply with any agreement, covenant or condition contained in this Lease, and such nonperformance or noncompliance would, with the lapse of time and/or demand or failure to take action, result in an Event of Default under clause (A) or (C) of this § 10, the Lessor may, upon notice to the Lessee, itself perform or comply with such agreement, covenant or condition to the extent provided in Article 15 of the CSA, and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amounts at the rate of 15.49% per annum, shall be payable to the Lessor by the Lessee upon demand.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by § 7 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. For the purpose of delivering possession, the Lessee shall forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written

notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks at such site within a 750 mile radius of Superior, Wisconsin, or Decker, Montana, as the Lessor may designate, it being understood that the Equipment will be stored in groups of units consisting of not less than 11 Units (a "Set") and that no Set will have any units of rolling stock not consisting of Units intermingled therewith; and permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance (which shall conform to the provisions of § 7 hereof), rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor (but in no event beyond the period expiring 730 days after December 31, 2002).

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 1/180 of the semi-annual Lease Factor, then applicable, of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is in default hereunder and is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Upon delivery of possession of each Unit to the Lessor hereunder, the Lessee shall make available to the Lessor all maintenance records and logs maintained during the term (and any renewal term) hereof with respect to such Unit at the Lessee's place of business during normal business hours.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. Without the prior written consent of the Lessor and the Vendor, the Lessee may sublease (which sublease shall be subject to the rights and remedies of the Lessor and the Vendor hereunder and under the CSA) the Units to, or permit their use by, any person controlling, controlled by, or under common control with the Lessee or a user incorporated in the United States of America (or any State thereof or the District of Columbia) upon lines of a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's prior written consent, not to be unreasonably withheld, must be obtained for any sublease (other than to an entity controlling, controlled by, or under common control with, the Lessee) that is for a term longer than one year or is renewable for a term more than one year; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that intermittent service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; and provided, further, however, that any such sublease or use shall be consistent with the provisions of the Tax Indemnity Agreement. The Lessee may not assign any of its rights or obligations hereunder to any person, firm or entity without the Vendor's and

the Lessor's prior written consent except to a person, firm or entity acquiring substantially all of the Lessee's assets or merging or consolidating with the Lessee, provided that the net worth of the person, firm or entity acquiring such assets or surviving such merger or consolidation is at least equal to the net worth of the Lessee immediately prior to such acquisition, merger or consolidation and provided, further, that no Event of default hereunder shall exist immediately after completion of such acquisition, merger or consolidation. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety. The Lessee shall not use, or permit any other person to use, the Equipment in a manner inconsistent with the purposes for which it was designed.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than encumbrances created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

§ 13. Renewal Options; Duty to First Offer. Provided that this Lease has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than 365 days prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional one-year period commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, at a Fair Market Rental (as defined below) payable in semiannual payments in arrears during such extended term; provided, however, that no option to extend the term of this Lease may be exercised by the Lessee under this § 13 more than five times. Any sale of any Unit by the Lessor to any person (other than the Lessee) shall be made expressly subject to the Lessee's rights under this paragraph.

If the term of this Lease is not renewed as of the end of the original term or any extended term hereof, and if the Lessor within 90 days thereafter decides to sell any Unit, or to accept an offer from any person to purchase any Unit, the Lessor shall promptly, but in any event prior to effecting such sale or accepting such offer, so notify the Lessee in writing. Upon

receipt of such notice, the Lessee shall have the option, exercisable by giving written notice to the Lessor to such effect within 30 days after receipt of such notice from the Lessor, to purchase such Unit at a Fair Market Purchase Price (as defined below) payable within 5 days after the applicable Fair Market Purchase Price has been determined as provided in the next following paragraph.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a one-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and it shall be assumed that all of the Units for which such determination is being made have been collected in one place and have been maintained in full compliance with all of the provisions of § 7 hereof. If, after 10 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 5 days after such notice is given, each party shall appoint an independent appraiser within 10 days after such notice is given, and the two appraisers so appointed shall within 20 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 20 days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of each renewal period, the Fair Market Purchase Price at the beginning of such renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed

shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The Lessee shall bear all appraisal procedure expenses; provided, however, that, if the Lessee shall exercise the option to renew or purchase with respect to which the appraisal was requested, such appraisal procedure expenses shall be borne equally by the Lessee and the Lessor.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks at such site within a 750 mile radius of Superior, Wisconsin, or Decker, Montana, as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 180 days following notification to the Lessor by the Lessee that all the Units have been so assembled and delivered for storage, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. Notwithstanding the foregoing, not more than 122 Units shall be delivered to the Lessor under this § 14 within any period of 30 consecutive days. During any such storage period the Lessee will permit the

Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by the maintenance provisions of § 7 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. Upon return of each Unit, the Lessee shall make available to the Lessor all maintenance records and logs maintained during the term (and any renewal term) hereof with respect to such Unit at the Lessee's place of business during normal business hours. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition in which Lessee normally maintains similar equipment while in a similar storage state and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall pay to the Lessor for each day from the date of such termination during which such Unit is being used by or with the consent of the Lessee an amount equal to the amount, if any, by which 1/180 of the Lease Factor, then applicable, of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by

law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filing of the CSA or the assignment thereof in Canada. This Lease and the CSA, and the assignments thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 15.49% or such lesser amount as may be legally enforceable. Interest shall be determined on the basis of a 360-day year for the actual number of days elapsed.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

- (a) if to the Lessor, at P.O. Box 5627, Minneapolis, Minnesota 55440, Attention of General Manager; and
- (b) if to the Lessee, at 2000 Second Avenue, Detroit, Michigan 48226, Attention of Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258, (2 Hopkins Plaza, if by hand), Baltimore, Maryland 21203, Attention of Corporate Trust Department.

§ 18. Severability; Effect and Modification of Lease. Any provision of this lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction,

ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the CSA, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgement hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 Interstate Commerce Act and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the law of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited. This Agreement is being delivered in the City and State of New York and shall be effective when one or more counterparts which together have been executed by both parties shall be delivered to Morgan, Lewis & Bockius in the City of New York. The parties hereto hereby irrevocably consent to the jurisdiction of any federal or state court sitting in the City and State of New York in respect of any claim or dispute arising hereunder (except as to which arbitration is provided for in § 7 hereof).

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

[Corporate Seal]

Attest:

Assistant Secretary

THE DETROIT EDISON COMPANY

by _____
Title:

[Corporate Seal]

Attest

Secretary

CARGILL LEASING CORPORATION

by _____
Title: Executive Vice President

STATE OF MICHIGAN)
)ss.:
COUNTY OF WAYNE)

On this _____ day of December, 1984, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he/she is _____ of THE DETROIT EDISON COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation

Notary Public

[Notarial Seal]

STATE OF MICHIGAN)
)ss.:
COUNTY OF HENNEPIN)

On this _____ day of December, 1984, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he/she is Executive Vice President of Cargill Leasing Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires: _____

Schedule A to Lease

<u>Builder</u>	<u>Type</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Base Price*</u>	<u>Estimated Time and Place of Delivery</u>
Ortner Freight Car Company	108 Ton, 4,320 cu. ft. aluminum bodied-steel underframed, rotary dump, gondola rail cars	Ortner Freight Car Co. Mont Orab, Ohio	183	DEEX7601-7783	\$45,336.58	January 1985 DeCoursey Yard Covington, Kentucky
			183	DEEX7784-7966	\$45,336.58	February, 1985 DeCoursey Yard Covington, Kentucky

* includes \$200 of prepaid freight, storage and insurance charges

SCHEDULE B TO LEASE

Casualty Value

<u>Semiannual Rental Payment Dates</u>	<u>Percentage of Lessor's Cost*</u>
5/31/85	98.64634
11/30/85	101.24116
5/31/86	102.43657
11/30/86	104.14949
5/31/87	104.77456
11/30/87	105.60546
5/31/88	105.59697
11/30/88	105.48896
5/31/89	104.75427
11/30/89	103.75899
5/31/90	102.73172
11/30/90	101.63863
5/31/91	100.49827
11/30/91	99.31207
5/31/92	98.07642
11/30/92	96.78698
5/31/93	95.45113
11/30/93	94.06055
5/31/94	91.58560
11/30/94	89.00080
5/31/95	86.32935
11/30/95	83.53289
5/31/96	80.64498
11/30/96	77.62019
5/31/97	74.49861
11/30/97	71.22735
5/31/98	67.85355
11/30/98	64.31625
5/31/99	60.67019
11/30/99	56.84572
5/31/00	52.90579
11/30/00	48.77137
5/31/01	44.51425
11/30/01	40.05601
5/31/02	35.52358
11/30/02	30.81446
12/31/02	30.00000
and thereafter	

* If a Casualty Occurrence occurs with respect to any Unit prior to the anniversary date indicated below (based on the actual date of occurrence of the Casualty Occurrence rather than any deemed date of such occurrence with respect to such Unit), the following percentage of Lessor's Cost, which is not included in the above percentages, shall be added to the above table values:

<u>Anniversary of Delivery Date of Unit</u>	<u>ITC Recapture Percentage</u>
First.....	18.51852
Second.....	14.81482
Third.....	11.11111
Fourth.....	7.40741
Fifth.....	3.70370

SCHEDULE C TO LEASE

Certificate of Acceptance

**To: Cargill Leasing Corporation
Mercantile-Safe Deposit and Trust Company
Ortner Freight Car Company**

I, the duly authorized representative for CARGILL LEASING CORPORATION and THE DETROIT EDISON COMPANY (the "Lessee") under the conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of December 1, 1984, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT:

DATE ACCEPTED:

NUMBER OF UNITS

NUMBERED:

I do hereby certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement. I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Owned by Cargill Leasing Corporation. Ownership Subject to a Conditional Sale Agreement filed under 49 U.S.C. §11303."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

BUILDER:

Ortner Freight Car Company

**_____
Authorized Representative of
Trustee and Lessee**

SCHEDULE D TO LEASE

Termination Value

<u>Semiannual Rental Payment Dates</u>	<u>Percentage of Lessor's Cost</u>
5/31/95	86.32935
11/30/95	83.53289
5/31/96	80.64498
11/30/96	77.62019
5/31/97	74.49861
11/30/97	71.22735
5/31/98	67.85355
11/30/98	64.31625
5/31/99	60.67019
11/30/99	56.84572
5/31/00	52.90579
11/30/00	48.77137
5/31/01	44.51425
11/30/01	40.05601
5/31/02	35.52358
11/30/02	30.81446
12/31/02	30.00000

ANNEX D
TO
CSA

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 1, 1984 (the "Assignment"), between Cargill Leasing Corporation (the "Lessor") and Mercantile Safe Deposit and Trust Company, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Ortner Freight Car Company (the "Builder"), providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and The Detroit Edison Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") which provides for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor and the Investor (as defined in the Participation Agreement) for whom the Vendor is acting to invest in the CSA Indebtedness (as defined in the CSA), the Lessor has agreed to assign for security purposes certain of its rights in, to and under the Lease to the Vendor.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's rights, titles and interests, powers, privileges, and other benefits in, to and under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable from the Lessee by the Lessor under or pursuant to the provisions of the Lease whether as rent, Termination Value or Casualty Value payment, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers, modifications and agreements, to give all notices, consents and releases, to take all action upon the happening of a default specified in the Lease, and to do any and all other

things whatsoever which the Lessor is or may become entitled to do under or with respect to the Lease; provided, however, that, in the absence of an Event of Default under the Lease, the Vendor shall not without the prior written consent of the Lessor waive or consent to any modification or amendment of, or give any release in respect of, any obligation of the Lessee (i) under the Lease or (ii) to make payments under the Lease other than payments of such amount or amounts as are applicable pursuant to the terms of the CSA and this Assignment to the satisfaction of the obligations of the Lessor under the CSA. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as attorney for the Lessor to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof; provided, further, however, that the term "Payments" as used herein shall not be deemed to include, at any time either before or after an Event of Default under the Lease shall have occurred and be continuing, (x) payments by the Lessee to the Lessor pursuant to § 6 or § 9 of the Lease or (y) that portion of the rentals payable under § 3 of the Lease attributable to any increase in the Lease Factor thereunder as the result of the assumption described in clause (a) of the second paragraph of said § 3 being incorrect, nor shall the Lessor be deemed to have assigned, transferred or set over unto the Vendor hereunder any right to make waivers, modifications or agreements relating thereto or to enforce the Lessee's payment thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments first, to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by bank wire in immediately available Federal funds to the Lessor at such address as shall be specified to the Vendor in writing, and such balance shall be retained by the Lessor.

If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA.

2. The assignment made by the Lessor hereunder is executed only as security and, therefore, the execution and delivery of this Assignment by the Lessor shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify, the liability of the Lessor under the Lease, it being agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor. The Lessor shall appear in and defend every action in connection with its obligations or duties under the Lease at its sole cost.

3. The Lessor represents and warrants to the Vendor that the Lessor has not entered into any assignment of its interests in the Lease other than this Assignment, has not entered into any amendment or modification of the Lease and has not created or incurred or suffered to exist with respect to the Lease or with respect to any of its interests therein any claim, lien or charge arising by, through or under the Lessor.

The Lessor agrees that it will from time to time and at all times, at the request of the Vendor or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions herein set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Vendor or intended so to be.

4. The Lessor will faithfully abide by, perform and discharge each and every obligation and agreement which the Lease provides is to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee of or from the obligations, covenants, conditions and agreements to be performed by the Lessee thereunder including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

5. The Lessor does hereby constitute the Vendor its true and lawful attorney, irrevocably, with full power (in the name of the Lessor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by

the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

6. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, the Lessor's assignment hereunder of its rights in, to and under the Lease shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. However, the Vendor, if so requested by the Lessor at that time, will (a) execute an instrument releasing its entire estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing or deposit hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed or deposited.

10. The Lessor shall cause copies of all notices and other documents received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the CSA, or at such other address as the Vendor shall designate in writing.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned

and transferred by the Lessor to the Vendor by this Assignment and which are for the sole benefit of the Lessor, except the right to receive and apply the payments as provided in Paragraph 1 hereof, without the prior written consent of the Lessor.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

CARGILL LEASING CORPORATION,

[Corporate Seal]

By _____
Title: Executive Vice President

Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY
, as Agent,

[Corporate Seal]

By _____
Title: Vice President

Attest:

Corporate Trust Officer

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

On this _____ day of December, 1984, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he/she is an _____ of Cargill Leasing Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public

My Commission Expires: _____

STATE OF MARYLAND)
) ss.:
COUNTY OF BALTIMORE)

On this _____ day of December, 1984, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a Vice President of Mercantile-Safe Deposit and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank, and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Notary Public

[Notarial Seal]

My Commission Expires: _____